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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/244 /2007 - CU[DB]

Date 26/03/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S UNIVERSAL CYLINDERS LTD.
SP-2, INDUSTRIAL AREA, KALADERA, JAIPUR.
M/S UNIVERSAL CYLINDERS LTD.

Appellant
Vs
C.C.E. JAIPUR I
Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/117 2009 CU[DB]** dated 03.03.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI
3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 244 of 2007

[Arising out of Order-in-Appeal No. 34(GRM)ST/JPR-I/2007 dated 23.2.2007 passed by Commissioner (Appeals) Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should be released under Rule 27: of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? N
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes.

M/s. Universal Cylinders Ltd. — Appellant

Vs.

Commissioner of Central Excise Jaipur — Respondent

Appearance:

Mr. Atul Gupta, Company Secretary for the Appellant
Mr. A.K. Madan, SDR for the Respondent

CORAM:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K.Das, Member (Judicial)

Date of Hearing /Decision: 3.3.2009

Final **ORDER NO. 57/10/09**

Per P.K.Das (for the Bench):

Relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of LPG cylinders under sub-heading 7311.00 of the Schedule to the Central Excise Tariff Act, 1985. In addition to that, they were undertaking the activities of reconditioning of the old and used cylinders supplied by the Oil companies as per repair contract. Vide show cause notice dated 30.6.04, tax was demanded for the period 1.7.03 to 31.3.04 amounting to Rs.2,30,264/- holding that the activities undertaken by the appellant would come within the purview of service tax under the category of "maintenance or repair". The original authority confirmed the demand of tax and also imposed penalty along with interest. Commissioner (Appeals) upheld the adjudication order.

2. Learned Counsel on behalf of the appellant submits that the activities of the appellant as per contract are segregation , depressurization, valve removal, cutting away the existing VP ring, cutting away the existing foot ring, rejection of cylinders in process, de-shaping of rejected cylinders and transportation of cylinders. He submits that during the relevant period the definition of "maintenance or repair" means any service provided by any person under a maintenance contract or agreement. In the present case, the appellant entered into agreement with the oil companies for repair and not maintenance. He drew the attention of the relevant portion of the

agreement dated 21.1.03. He relied upon the decision of the Tribunal in the case of CCE Jaipur vs. Bhiwadi Cylinders Pvt. Ltd. [2008 (86) RLT 222 (CESTAT-Del)].

3. Learned SDR reiterates the finding of the Commissioner (Appeals). He submits that it is revealed from the contract that the party was awarded a rate contract for maintenance. In this case, he submits that Clause 4 of the agreement indicates the quantum of 22600 cylinders would be repaired and returned to the corporation after maintenance or repair but they have to segregate the total number of cylinders for repair job, which amounts to maintenance work.

4. After hearing both the sides and on perusal of the record, we find that the Work Contract dated 9.7.04 of Indian Oil Corporation Ltd. was awarded by the appellant for "hot repair of cylinders Ex-LPG Plant". It is seen from the contract that the appellant were required to do repairing job of cylinders. Clause 4 of the agreement as relied upon by the learned DR also indicates job of repair. There is no material available that the appellants were undertaking the maintenance job. We find that the Tribunal in the case of CCE Jaipur vs. Bhiwadi Cylinders Pvt. Ltd. (supra) on identical issue had held as under:-

> "**6.** In the present case, the respondent is only undertaking repair of the old cylinders. Contract for maintenance is distinct from a contract for repair. Maintenance involves periodical checkups and services to prevent failure of the machinery. Repair arises after the machine fails or gives problem. Maintenance may or may not involve repair. There

may be cases where no repair need be undertaken of the machinery during the entire period of maintenance contract. Maintenance is in the nature of preventive action. Admittedly, the respondent was only repairing old gas cylinders and for taking such repair, they have entered into a rate contract. This contract for repair cannot be treated as a contract for maintenance. Further, the Board's circular dated 27-7-2005, which has been relied by the Commissioner (Appeals) clarifies that when only repair work was undertaken without a maintenance contract then service tax was not attracted for the period prior to 16-6-2005."

4. We have noticed that on 16.6.05, the definition of maintenance/repair service was amended. Accordingly, the demand of tax on repair job prior to 16.6.05 is not maintainable. Hence, the impugned order is set aside. The appeal is allowed with consequential relief.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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